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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/795,958

03/08/2004

Gary Marshik

BSI-035

8611

51414

7590

10/02/2006

GOODWIN PROCTER LLP
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EXAMINER

COULTER, ANDREA

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/795,958	MARSHIK ET AL.	
	Examiner	Art Unit	
	Andrea L. Coulter	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 15-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/13/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse in the reply filed on September 8, 2006 is acknowledged. The traversal is on the grounds that a search of either claim group would require a search in the same class. This is not found persuasive because the applicant has not effectively shown that the two claim groups do not deal with distinct inventions capable of supporting separate patents. If the applicant views the two groups of claims as patentably distinct, then restriction is proper. If the applicant takes the opposite view, then the applicant should clearly state on the record that the two claim groups are not patentably distinct; however, applicant should understand that inventions that are not patentably distinct for restriction purposes are also not patentably distinct for rejection purposes.

The requirement is still deemed proper and is therefore made FINAL.

Thus, claims 15-19 are hereby withdrawn from consideration and claims 1-14 and 20-27 are addressed below.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on September 13, 2004 was considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14 and 20-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Heng (US 7,096,626). Heng discloses a pivot bar 16 and a tilt latch 20 with substantially identical housings (30, 130), such that the pivot bar and the tilt latch are interchangeably locatable in apertures in the window sash 7.

The tilt latch 20 comprises a body 30 and a retractable member 51 for engaging a jamb channel 12 when in an extended position from the body. The tilt latch further comprises a release 53 for retracting the member 51 and a tab 35a for retaining the body in a window sash 7.

The pivot bar 16 comprises a substantially planar elongate body 130 with a profile-engaging groove (between 73a and 34a) and a pivot element 161 extending from the body. The pivot element is adapted to selectively engage a balance shoe, is integral with the body, is substantially T-shaped, and comprises a tab for retaining the body in a window sash. The pivot bar 16 comprises a shoulder 33 that is thicker than the body.

Since the housings are the same, both the pivot bar 16 and the tilt latch 20 comprise top and front surfaces for engaging respective portions of profiles of the apertures formed in the window sash, the surfaces of the pivot bar and the tilt latch having substantially common mating perimeters.

Heng shows a sash 7 comprising a top and bottom rail 10 and two stiles 9, each of which contain an aperture with substantially the same profile as the other apertures, such that the pivot bar and the tilt latch are interchangeably locatable therein.

The reference thus reads on the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea L. Coulter whose telephone number is (571) 272-1679. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571)272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrea L. Coulter
Patent Examiner



Jerry Redman
Primary Examiner